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5 Attorneys For Defendants
MERRILL LYNCH & CO., INC. AND
6 MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED
7

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
11

12 LOUISIANA PACIFIC CORPORATION, }

Case No. C 09 03529 JSW

13 Plaintiff,

**STIPULATION AND ~~PROPOSED~~
ORDER EXTENDING TIME TO
RESPOND TO COMPLAINT**

14 vs.

15 MONEY MARKET 1 INSTITUTIONAL
INVESTMENT DEALER, MERRILL
16 LYNCH & CO., INC., MERRILL LYNCH,
PIERCE, FENNER & SMITH
17 INCORPORATED, AND DEUTSCHE
BANK SECURITIES INC.,
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Defendants.
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1 WHEREAS, on June 10, 2009, the United States Judicial Panel on Multidistrict
 2 Litigation centralized four actions before the Honorable Loretta A. Preska in the Southern
 3 District of New York, captioned *In re Merrill Lynch Auction Rate Securities Litigation*, 1:08-cv-
 4 3037-LAP; *Community Trust Bank, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 1:09-cv-
 5 5403-LAP; *Louisiana Stadium & Exposition District, et al. v. Financial Guaranty Ins. Co., et al.*,
 6 1:09-cv-5404-LAP; and *The Cooperative Bank, et al., v. Merrill Lynch, Pierce, Fenner & Smith,*
 7 *Inc.*, 1:09-cv-5405-LAP (the “Centralized Actions”);

8 WHEREAS, on July 31, 2009, Plaintiff filed in this Court its complaint (the
 9 “Complaint”) in the above-captioned action (the “Action”);

10 WHEREAS, on August 14, 2009, Defendants Merrill Lynch & Co., Inc. and Merrill
 11 Lynch, Pierce, Fenner & Smith, Inc., filed a Notice of Tag-Along Action with the United States
 12 Judicial Panel on Multidistrict Litigation (“MDL Panel”), seeking to transfer the Action for
 13 coordinated or consolidated pretrial proceedings with the Centralized Actions currently pending
 14 before Judge Preska in the United States District Court for the Southern District of New York;

15 WHEREAS, on September 1, 2009, the Clerk of the MDL Panel entered a Conditional
 16 Transfer Order conditionally transferring the Action to Judge Preska in the Southern District of
 17 New York;

18 WHEREAS, on September 15, 2009, defendant Deutsche Bank Securities Inc. (“DBSI”)
 19 filed a notice of opposition to the September 1, 2009 Conditional Transfer Order;

20 WHEREAS, on September 16, 2009, the MDL Panel issued a stay of its September 1,
 21 2009 Conditional Transfer Order pending the resolution of DBSI’s opposition;

22 WHEREAS, on September 24, 2009, DBSI filed a motion pursuant to
 23 28 U.S.C. § 1404(a) seeking to transfer the Action to the Southern District of New York, but not
 24 seeking consolidation with the Centralized Actions (“DBSI’s Transfer Motion”);

25 WHEREAS the procedures applicable to the Centralized Actions, as enumerated in the
 26 Stipulation and Revised Scheduling Order signed by Judge Preska on August 17, 2009 (attached
 27 hereto as Exhibit A), require defendants to inform plaintiff by letter of what they believe to be
 28 any deficiencies in the complaint before filing a motion to dismiss and allow plaintiff the

1 opportunity to amend the complaint after receiving the letter;

2 Now, therefore, the Parties, through their respective undersigned counsel, hereby
3 STIPULATE, AGREE, and JOINTLY REQUEST the following:

- 4 1. By October 15, 2009, each Defendant will deliver to Plaintiff a letter enumerating what it
5 believes to be the deficiencies in the Complaint that will form the bases for its motion to
6 dismiss. With respect to any Federal Securities law claims, such letters shall focus on
7 Second Circuit law, and not Ninth Circuit law.
- 8 2. By October 22, 2009, Plaintiff will notify Defendants whether it intends to amend the
9 Complaint, with the understanding that, except as provided in Paragraph 6 below,
10 Defendants do not currently intend to consent to any further amendments.
- 11 3. If Plaintiff notifies Defendants that it will not amend the Complaint, Defendants will
12 answer or otherwise move in response to the Complaint no later than: (a) 20 days after
13 Defendants' counsel receive notice that the MDL Panel has filed the Conditional Transfer
14 Order in the United States District Court for the Southern District of New York; (b) 20
15 days after an Order is entered should this Court transfer this Action to the Southern
16 District of New York under 28 U.S.C. § 1404(a); or (c) 30 days after an Order is entered
17 should this Court decline to transfer this Action to the Southern District of New York.
- 18 4. If Plaintiff notifies Defendants that it will amend the Complaint, Defendants will answer
19 or otherwise move in response to the Amended Complaint no later than 25 days after
20 service of the Amended Complaint. However, in no event shall Defendants be required
21 to answer or otherwise move in response to the Amended Complaint until: (a) 20 days
22 after Defendants' counsel receive notice that the MDL Panel has filed the Conditional
23 Transfer Order in the United States District Court for the Southern District of New York;
24 (b) 20 days after an Order is entered should this Court transfer this Action to the Southern
25 District of New York under 28 U.S.C. § 1404(a); or (c) 30 days after an Order is entered
26 should this Court decline to transfer this Action to the Southern District of New York.
- 27 5. If any Defendant elects to move to dismiss the Complaint and this action has been
28 transferred to the Southern District of New York either by the MDL Panel or pursuant to

1 DBSI's Transfer Motion, such motion will not raise any arguments not set forth in that
2 particular Defendant's Deficiency Letter.

3 6. If (a) Plaintiff gives notice pursuant to Paragraph 2 above that it does not intend to amend
4 the Complaint, (b) this Action has not been transferred to the Southern District of New
5 York, (c) any Defendant makes any argument not included in that particular Defendant's
6 Deficiency Letter in a motion to dismiss, and (d) Plaintiff seeks to amend its Complaint,
7 then such Defendant will consent to Plaintiff's amendment of the Complaint.

8 7. In the event that any Defendant elects to move to dismiss the Complaint or the Amended
9 Complaint, Plaintiff will serve an opposition to that particular motion to dismiss no later
10 than 45 days after service of that motion to dismiss. That particular Defendant shall have
11 30 days to serve any reply to Plaintiff's opposition.

12 Dated: October 5, 2009

Respectfully submitted,

13 SIDLEY AUSTIN LLP

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15 By: /s/ Sara B. Brody
16 SARA B. BRODY

17 Of counsel:

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19 Alex J. Kaplan
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27 Attorneys For Defendants
28 Merrill Lynch & Co., Inc. and Merrill Lynch,
Pierce, Fenner & Smith Incorporated

1 Dated: October 5, 2009

Morgan, Lewis, & Bockius LLP
Jami Wintz McKeon
Elizabeth A. Frohlich

2
3 By: /s/ Elizabeth A. Frohlich
Elizabeth A. Frohlich

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5 Attorneys For Defendant
Deutsche Bank Securities, Inc.

6 Dated: October 5, 2009

Arent Fox LLP
Robert C. O'Brien
Steven E. Bledsoe
Antoinette Waller

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9 By: /s/ Antoinette Waller
Antoinette Waller

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11 Attorneys For Defendant Money Market 1
Institutional Investment Dealer

12 Dated: October 5, 2009

Saveri & Saveri, Inc.
R. Alexander Saveri
Geoffrey C. Rushing
Gianna Gruenwald

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15 By: /s/ R. Alexander Saveri
R. Alexander Saveri

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17 Attorneys For Plaintiff Louisiana Pacific
Corporation

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19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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21 Dated: October 6, 2009

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24 Hon. Jeffrey S. White
United States District Judge